STATE OF MINNESOTA
IN SUPREME COURT
ADM04-8001

ORDER PROMULGATING AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

The Supreme Court Advisory Committee on the Rules of Civil Procedure has recommended amendments to the Rules of Civil Procedure to accommodate the transition by the judicial branch to a more universal electronic environment. Specifically, the committee recommends amendments to: incorporate terms commonly used in an electronic filing and service environment; clarify the authority of court administration to reject documents improperly submitted for filing; adopt procedures governing subpoenas for depositions taken in out-of-state actions; and implement statutory authority for the use of statements sworn under penalty of perjury. A minority report, submitted by three committee members, disagreed with the recommendation to permit the use of statements sworn under penalty of perjury.

In an order filed January 2, 2015, the court provided a public comment period on the proposed amendments to the Rules of Civil Procedure. The court also scheduled a public hearing on March 17, 2015 to consider issues related to public access to judicial branch records that may be presented by the amendments recommended to these rules. Two written comments were received. The first, from several judges from the Second Judicial District, agreed with the concerns expressed in the minority report regarding the use of sworn statements under penalty of perjury and objected to rule changes that would eliminate the requirement for signed, sworn, and notarized affidavits. The second, from

the Minnesota State Bar Association, expressed concern with potentially expanded authority to reject documents submitted for filing and objected to proposed amendments to Minn. R. Civ. P. 11 that would subject discovery documents and documents containing restricted identifiers to the sanctions authority provided in that rule.

The court has carefully considered the committee's recommendations and the written comments. Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Civil Procedure be, and the same are, prescribed and promulgated to be effective as of July 1, 2015. The rules as amended shall apply to all cases pending on, or filed on or after, the effective date.

2. The inclusion of committee comments is for convenience and does not reflect court approval of the comments.

3. The Advisory Committee for the Rules of Civil Procedure shall continue to serve and monitor the rules and these amendments during the expansion of electronic filing and electronic service in the district courts, and by April 1, 2016, report to the court concerning any additional or new amendments to the rules deemed necessary by the committee.

Dated: April 22, 2015

BY THE COURT:

Lorie S. Gildea
Chief Justice

STATE OF MINNESOTA
IN SUPREME COURT

ADM04-8001

MEMORANDUM

PER CURIAM.

In July 2014, we directed the Advisory Committee on the Rules of Civil Procedure to consider whether amendments to the rules were needed to accommodate the transition by the judicial branch to a more universal electronic environment. The committee met several times in 2014, and on December 23, 2014, filed a report and recommendations for amendments to a number of rules. These recommended amendments: (a) incorporate terms used more commonly in an electronic filing and service environment, such as deleting "paper" in favor of "document," as well as other non-substantive updates; (b) clarify the instances in which submitted documents can be rejected without filing by court administration; (c) adopt a new rule based on the Uniform Interstate and Deposition Rule recommended by the National Conference of Commissioners on Uniform State Laws; and (d) implement statutory authority for sworn statements under penalty of perjury.

We provided a 60-day public comment period on the proposed amendments. The Minnesota State Bar Association and a group of Second District Judges submitted written comments regarding some of the proposed amendments. After consideration of the committee's recommendations and the comments, with certain exceptions noted below, the court has approved the recommended amendments.

First, the committee recommended a new provision for Minn. R. Civ. P. 5.04, in proposed paragraph (d), to establish a procedure for segregating, and then correcting documents containing restricted identifiers that are filed without the appropriate designation or redaction. *See* ADM04-8001, Final Report at pp. 9-10 (filed Dec. 23, 2014). A similar procedure was proposed by the Advisory Committee on the General Rules of Practice for the District Courts. The Advisory Committee on the Rules of Civil Procedure proposed, and we agree, that these measures are best promulgated in the General Rules of Practice, for application to all case types. We therefore do not adopt the amendments proposed for Minn. R. Civ. P. 5.04(d), and promulgate instead the recommended amendments to Minn. R. Gen. Prac. 11.04.[1] *See* ADM09-8009, *Order Promulgating Amendments to the General Rules of Practice* (Minn. filed Apr. 22, 2015).

Second, the MSBA raised concerns about the proposed amendments to Rule 11 that would subject the filing of discovery documents and the filing of documents containing restricted identifiers to the possibility of sanctions under that rule. After consideration of the MSBA's concerns regarding the proposed addition of "discovery request or response" to Rule 11.01, and with the further input of the committee, we agree

---

[1] The MSBA also questioned the need for the amendment proposed to Minn. R. Civ. P. 5.04(c), to permit court administration to reject discovery documents submitted for filing. "[A]t a minimum," the MSBA asked that the rules clarify that discovery materials can be filed "when used in connection with a motion or for trial." Rule 5.04 prohibits parties from filing discovery documents, and thus we cannot agree with the MSBA that filing those documents is "harmless." In addition, the committee proposed language to allow those documents to be filed when "authorized by court order or rule" or with the "express permission of the court." Minn. R. Civ. P. 5.04 (b)-(c). The committee's comment acknowledges that discovery requests or responses submitted as an exhibit to another document may be filed. Thus, the rule as amended simply confirms that court administration need not file documents that are *improperly* submitted for filing.

that this amendment is unnecessary. The amendment proposed at line 298, page 14 of the committee's report is therefore not adopted.

On the other hand, we agree with the committee's proposed amendment to Minn. R. Civ. P. 11.02, to require a certification that the document submitted for filing does not include any restricted identifiers or that, if included, the appropriate confidentiality designation is used. In response to this proposal, the MSBA expressed concern that an inadvertent submission of documents with restricted identifiers would be subject to Rule 11 sanctions. Existing rules, however, already prohibit parties from "submit[ting] restricted identifiers on any pleading or other document that is to be filed with the court." Minn. Gen. R. Prac. 11.02(a). Further, filers are "*solely responsible* for ensuring that restricted identifiers do not . . . appear on the pleading or other document filed with the court." *Id.* (emphasis added). Finally, court staff do "not review each pleading or document filed by a party for compliance" with the prohibition on restricted identifiers. *Id.* Thus, the proposed amendment to Rule 11.02 does no more than re-state the obligations the filer already bears to ensure restricted identifiers are not included or accessible in a public filing. And, the certification of compliance represented by the filer's signature is to the "best of the [signer's] knowledge, information, and belief formed after an inquiry reasonable under the circumstances." Minn. R. Civ. P. 11.02. We are confident that these provisions allow district courts to balance the competing needs to consider relevant confidential information, protect the confidentiality of that information, and distinguish between a good-faith, diligent effort to comply with court rules as compared to a failure to undertake reasonable efforts to do so. Thus, with some

minor amendments to the language in paragraph 11.02(e) to clarify the motion procedure that applies in the event of non-compliance, the committee's recommended amendments are adopted.

Third, a minority report and a group of Second Judicial District Judges expressed concerns regarding proposed amendments to relax rule requirements for sworn, notarized affidavits, and permit the use of statements sworn under penalty of perjury instead. Similar amending language has been proposed for the General Rules of Practice for the District Courts and other court rules. In considering these proposed amendments, the comments expressed concern about the loss of "external verification" and, in turn, the lost element of fraud protection provided by the notary process.

Minnesota Statutes § 358.116 (2014), enacted by the 2014 Legislature, *see* Act of May 6, 2014, ch. 204, § 3, 2014 Minn. Laws 485, 486, states that "notarized" documents filed with the judicial branch are "not required" unless a court rule provides otherwise. Instead, signing a document is "verification upon oath or affirmation," provided the signer includes a declaration under penalty of perjury that everything "stated in th[e] document is true and correct." *Id.*

The comments correctly acknowledge that notarization adds an element of solemnity to the signing process that can serve as a deterrent against fraud. We recognize that district court judges may be the first to determine the validity of a signed, sworn statement, notarized or otherwise. But we are not convinced that notarization, by itself, eases that determination. In fact, some of the examples of fraudulent signing activity relied on in these comments were based on notarized affidavits. Nor do we conclude that

the criminal penalty that accompanies perjury is insufficient to deter fraud or to convey the solemnity of the signing. Sworn statements under penalty of perjury have been permitted for years in federal courts, *see* 28 U.S.C. § 1746 (2012), without an apparent loss in solemnity or an increase in fraudulent statements. In summary, while notarized statements may be preferable in some instances, in the majority of instances of signed documents, we believe that the improved access to the courts advanced by the use of sworn statements submitted under penalty of perjury outweighs the concerns advanced by the comments. We therefore adopt the committee's recommended amendments to the Rules of Civil Procedure to permit the use of sworn statements submitted under penalty of perjury.

We appreciate the thorough and thoughtful work of the committee in completing this work in the time frame established to permit the continued implementation and expansion of e-filing and e-service as recommended by the eCourtMN Steering Committee.

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

Rule 3. Commencement of the Action; Service of the Complaint; Filing of the Action

3.01 Commencement of the Action

A civil action is commenced against each defendant:

(a) when the summons is served upon that defendant, or

(b) at the date of acknowledgement of service if service is made by mail or other means consented to by the defendant either in writing or electronically; or

(c) when the summons is delivered to the sheriff in the county where the defendant resides for service; but such delivery shall be ineffectual unless within 60 days thereafter the summons is actually served on that defendant or the first publication thereof is made.

Filing requirements are set forth in Rule 5.04, which requires filing with the court within one year after commencement for non-family cases.

Advisory Committee Comments—2015 Amendments

This rule is amended to add the explicit provision for consent to service by any means in subdivision (b), not only service by mail. If the party to be served consents to service, the service is effective and constitutionally sound regardless of method. Thus, a party may consent to service by ordinary electronic mail even though the rules do not otherwise provide for it.

* * *

4.04 Service by Publications; Personal Service Out of State

* * *

(b) Personal Service Outside State. Personal service of such summons outside the state, proved by the affidavit of the person making the same ~~sworn to before a person authorized to administer an oath~~, shall have the same effect as the published notice provided for herein.

* * *

Advisory Committee Comments—2015 Amendments

Rule 4.04 is amended to implement a new statute directing the courts to accept documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minn. Stat. § 358.116 (2014) (codifying 2014 Minn. Laws ch. 204, § 3). The statute allows the courts to require specifically, by rule, that notarization is necessary. The difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization, and notarization often places a significant burden on self-represented litigants. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits." Rule 15 of the Minnesota General Rules of Practice establishes uniform requirements for the formalities of documents signed under penalty of perjury.

Rule 5. Service and Filing of Pleadings and Other Papers

* * *

5.02. Service; How Made

(a) Methods of Service. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Written admission of service by the party or the party's attorney shall be sufficient proof of service. If Rule 14 of the General Rules of Practice for the District Courts or an order of the Minnesota Supreme Court authorizes or requires that service be made by electronic means, service shall be made by compliance with subdivision (b) of this rule. Otherwise, s~~S~~ervice upon the attorney or upon a party shall be made by delivering a copy to the attorney or party; ~~transmitting a copy by facsimile machine to the attorney or party's office; or~~ by mailing a copy to the attorney or party at the attorney's or party's last known address; or, if no address is known, by leaving it with the court administrator. Delivery of a copy within this rule means: ~~H~~handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the attorney's or party's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. ~~If service is either authorized or required to be made by electronic means by these rules, delivery shall be accomplished by compliance with subdivision (b) of this rule.~~

(b) E-Service. Service of all documents after the original complaint may, and where required by these rules shall, be made by electronic means as ~~other than facsimile transmission if~~ authorized by Rule 14 of the ~~Minnesota~~ General Rules of Practice for the District Courts ~~and if service is made in accordance with that rule~~.

(c) Effective Date of Service. Service by mail is complete upon mailing. Service by facsimile is complete upon completion of the facsimile transmission. Service by authorized electronic means using the court's E-Filing System as defined by Rule 14 of the ~~Minnesota~~ General Rules of Practice for the District Courts is complete~~:~~

~~(1)~~ upon completion of the electronic transmission of the document(s) to the E-Filing System ~~if the E-Filing System service command is used; and~~

~~(2) upon acceptance of the electronic filing by the court, as provided in Rule 14, if the E-Filing System joint service and filing command is used~~.

(d) Technical Errors; Relief. Upon satisfactory proof that electronic filing or electronic service of a document was not completed, any party may obtain relief in accordance with Rule 14.01(~~f~~c) of the General Rules of Practice for the District Courts. ~~That relief may be available because of:~~

~~(1) an error in the transmission of the document to the authorized electronic filing and service system that was unknown to the sending party;~~

~~(2) a failure of the system to process the document when received, or~~

~~(3) other technical problems experienced by any party or system.~~

~~The court may enter an order permitting the document to be deemed filed or served as of the date it was first attempted to be transmitted electronically. If appropriate, the court may adjust the schedule for responding to these documents or the court's hearing, or provide other relief.~~

Advisory Committee Comments—2015 Amendments

Rule 5.02 is amended in several ways to implement the use of e-filing and e-service in civil actions. Rule 5.02(a) adopts the more detailed provisions of Rule 14 of the Minnesota General Rules of Practice, which establishes procedures for e-filing and e-service in all trial courts. See Minn. Gen. R. Prac. 1.01. The deleted reference to filing by facsimile from Rule 5.02(a) is not intended to affect the availability of facsimile service or filing. Facsimile transmission is defined as a means of electronic transmission allowed under Minn. Gen. R. Prac. 14.02(a)(7).

The use of the alternative "may or shall" language in Rule 5.02(a) reflects the expectation that the implementation of electronic filing and service is likely to involve some period of time where e-filing and e-service will be required for some actions (based on district, county, or type of action), permitted for others, or not permitted at all. The applicability of e-filing and e-service to particular actions should be established in separate implementation orders.

* * *

5.04 Filing; Certificate of Service

(a) Deadline for Filing Action. Any action that is not filed with the court within one year of commencement against any party is deemed dismissed with prejudice against all parties unless the parties within that year sign a stipulation to extend the filing period. This paragraph does not apply to family cases governed by rules 301 to 378 of the General Rules of Practice for the District Courts.

(b) Filing of Documents after the Complaint; Certificate of Service. All documents after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, except disclosures under Rule 26, expert disclosures and reports, depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless ~~upon order of the court or for use in the proceeding~~authorized by court order or rule.

(c) Rejection of Filing. The administrator shall not refuse to accept for filing any documents presented for that purpose solely because it is not presented in proper form as required by these rules or any local rules or practices. Documents may be rejected for filing if:

(1) tendered without a required filing fee or a correct assigned file number;~~,~~

(2) ~~or are~~ tendered to an administrator other than for the court where the action is pending; or

(3) the document constitutes a discovery request or response submitted without the express permission of the court.

Advisory Committee Comments—2015 Amendments

Rule 5.04 clarifies the limited circumstances where documents tendered to the court administrator for filing can be rejected. These provisions largely reflect current practices in the courts. Concern about public access to sensitive information is greater in the context of electronic filing because of the risk that the information could be found and spread over the Internet shortly after filing. See, e.g., Minn. Gen. R. Prac. 11 for requirements for submitting restricted identifiers (e.g., social security numbers, etc.) and procedures to address any failure to comply with the requirements. It is not feasible to accept for filing documents that relate to an action pending in another district or to file them in an action under an invalid file number. The acceptance of these documents would only create confusion for the parties, both in the intended district and action and in the district and action where they are mistakenly sent. Similarly, payment of the required filing fee is required by statute, see Minn. Stat. § 357.021, and there is no provision for filing without payment of that required fee. The filing of discovery requests and responses, other than notices of taking depositions, is already prohibited by the second paragraph of this rule; the amended language

makes it clear that the court administrators are authorized to reject these unauthorized filings. The rule does not prevent a party from filing an affidavit that incorporates or attaches copies of discovery requests or responses that are authenticated by the affiant.

The rule intentionally omits any recommendation that the absence of a Civil Cover Sheet would result in the rejection of a document for filing. The court can impose an appropriate sanction for this failure after appropriate notice to the parties and, if the court determines it is appropriate, an opportunity to cure the defect. The improper submission of restricted identifiers is addressed in Rule 11.02(3) of these rules and in Rule 11.04 in the General Rules of Practice.

* * *

5.06. Filing Electronically

Where authorized or required by order of the Minnesota Supreme Court or Rule 14 of the General Rules of Practice for the District Courts, documents may, or where required shall, be filed electronically by following the procedures of such order or rule and will be deemed filed in accordance with the provisions of this rule.

A document that is electronically filed is deemed to have been filed by the court administrator on the date and time of its transmittal to the court through the E-Filing System as defined by Rule 14 of the ~~Minnesota~~ General Rules of Practice for the District Courts, and except for proposed orders, the filing shall be stamped with this date and time if it is subsequently accepted ~~subject to acceptance~~ by the court administrator. If the filing is not subsequently accepted by the court administrator for reasons authorized by Rule 5.04, no~~the~~ date stamp shall be applied~~removed~~ and the E-Filing System shall notify the filer that the filing was not accepted~~document electronically returned to the person who filed it~~.

Advisory Committee Comments—2015 Amendments

This rule incorporates the provisions of Minn. Gen. R. Prac. 14 on the operation of electronic filing and the determination of the date of filing where it is accomplished by use of the court's E-Filing System.

The use of the alternative "may or shall" language in the first paragraph reflects the expectation that the implementation of electronic filing and service is likely to involve some period of time where e-filing and e-service may be required for some actions (based on district, county, or type of actions), permitted for others, or not permitted at all. The rules are designed to implement e-filing and e-service in particular actions as established by separate implementation orders.

RULE 5A. NOTICE OF CONSTITUTIONAL CHALLENGE TO A STATUTE

A party that files a pleading, written motion, or other documentpaper drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the documentpaper that raises it, if:

(A) a federal statute is questioned and neither the United States nor any of its agencies, officers, or employees is a party in an official capacity, or

(B) a state statute is questioned and neither the state nor any of its agencies, officers, or employees is a party in an official capacity; and

(2) serve the notice and documentpaper on the Attorney General of the United States if a federal statute is challenged, or on the Minnesota Attorney General if a state statute is challenged, by United States Mail to afford the Attorney General an opportunity to intervene.

Rule 6. Time

* * *

6.05 Additional Time After Service by Mail or Service Late in Day

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other document upon the party, and the notice or document is served upon the party by United States Mail, three days shall be added to the prescribed period. If service is made by any means other than United States Mail and accomplished after 5:00 p.m. local Minnesota time on the day of service, one additional day shall be added to the prescribed period.

Advisory Committee Comments—2015 Amendments

Rule 6.05 is amended to remove a potential ambiguity in the existing rule—the 5:00 p.m. deadline for service to be accomplished without allowing an additional day for response is defined to be Minnesota time. This provision will be especially important for service using the court's E-Filing System, by which service could be effected from anywhere in the world.

Rule 7. Pleadings Allowed; Form of Motions

* * *

7.02 Motions and Other Documents~~Papers~~

(a) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. Motions provided in these rules are motions requiring a written notice to the party and a hearing before the order can be issued unless the particular rule under which the motion is made specifically provides that the motion may be made ex parte. The parties may agree to written submission to the court for decision without oral argument unless the court directs otherwise. Upon the request of a party or upon its own initiative, the court may hear any motion by telephone conference.

(b) The rules applicable for captions, signing, and other matters of form of pleadings apply to all motions and other documents~~papers~~ provided for by these rules.

(c) All motions will be signed in accordance with Rule 11.

Rule 10. Form of Pleadings

* * *

10.04 Failure to Comply

If a pleading, motion or other document~~paper~~ fails to indicate the case type as required by Rule 10.01, it may be stricken by the court unless the appropriate case type indicator is communicated to the court administrator promptly after the omission is called to the attention of the pleader or movant.

Rule 11. Signing of Pleadings, Motions, and Other Documents~~Papers~~; Representations to Court; Sanctions

11.01 Signature

Every pleading, written motion, and other similar document shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is ~~not represented by an attorney~~self-represented, shall be signed by the party. Each document shall state the signer's address and telephone number and e-mail address, if any, and attorney registration number if signed by an attorney. Except when otherwise

specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned document shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party. If authorized by order of the Minnesota Supreme Court or by rule of court, a document filed, signed, or verified by electronic means in accordance with that order constitutes a signed document for the purposes of applying these rules.

The filing or submitting of a document using an E-Filing System established by rule of court constitutes certification of compliance with the signature requirements of the applicable court rules.

11.02 Representations to Court

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other documentpaper, an attorney or unrepresented partyself-represented litigant is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,:

(a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief; and

(e) the pleading, motion, or other document does not include any restricted identifiers and that all restricted identifiers have been submitted in a confidential manner as required by Rule 11 of the General Rules of Practice for the District Courts. Notwithstanding Rule 11.03(a)(1) of these rules, a party shall not be required to wait 21 days before filing or presenting a motion seeking relief from the court in regard to the proper submission of documents containing restricted identifiers.

11.03 Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that Rule 11.02 of these rules has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated Rule 11.02 or are responsible for the violation. This rule does not limit the imposition of sanctions authorized by other rules, statutes, or the inherent power of the court.

In any action, the court may in its discretion direct the attorneys for the parties and any self-represented litigants~~unrepresented parties~~ to appear before it for a conference or conferences before trial for such purposes as:

(a) expediting the disposition of the action;

(b) establishing early and continuing control so that the case will not be protracted because of lack of management;

(c) discouraging wasteful pretrial activities;

(d) improving the quality of the trial through more thorough preparation; and

(e) facilitating the settlement of the case.

* * *

16.04 Final Pretrial Conference

Any final pretrial conference may be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any self-represented litigants~~unrepresented parties~~.

Rule 26. Duty To Disclose; General Provisions Governing Discovery

* * *

26.06 Discovery Conference

* * *

(b) Conference Content; Parties' Responsibilities. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26.01(a), (b); discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all self-represented litigants~~unrepresented parties~~ that have appeared in the case are jointly responsible for arranging the conference, and for attempting in good faith to agree on the proposed discovery plan. A written report outlining the discovery plan must be filed with the court within 14 days after the conference or at the time the action is filed, whichever is later. The court may order the parties or attorneys to attend the conference in person.

* * *

26.07 Signing of Discovery Requests, Responses and Objections

In addition to the requirements of Rule 33.01(d), every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address and e-mail address shall be stated. A ~~party who is not represented by an attorney~~ self-represented litigant shall sign the request, response, or objection and state the party's address and e-mail address. The signature constitutes a certification that the attorney or party has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

Rule 32. Use of Depositions in Court Proceedings

32.05 Use of Video~~tape~~ Depositions

Rule 33. Interrogatories to Parties

33.01 Availability

* * *

(d) Answers to interrogatories shall be stated fully in writing and shall be signed under oath or penalty of perjury by the party served or, if the party served is the state, a corporation, a partnership, or an association, by any officer or managing agent, who shall furnish such information as is available. A party shall restate the interrogatory being answered immediately preceding the answer to that interrogatory.

All answers signed under penalty of perjury must have the signature affixed immediately below a declaration using substantially the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." In addition to the signature, the date of signing and the county and state where the document was signed shall be noted on the document.

Without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 50 in number including all discrete subparts, to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave to serve additional interrogatories shall be granted to the extent consistent with the principles of Rule 26.02(a).

Advisory Committee Comments—2015 Amendments

Rule 33.01 is amended to implement a new statute directing the courts to accept documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minn. Stat. § 358.116 (2014) (codifying 2014 Minn. Laws ch. 204, § 3). The statute allows the courts to require specifically by rule that notarization is necessary, but the difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization. Accordingly, interrogatory answers may be signed by the party under penalty of perjury, so long as the appropriate language is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Rule 15 of the Minnesota General Rules of Practice establishes uniform requirements for the formalities of documents signed under penalty of perjury.

Rule 45. Subpoena

* * *

[Because Rule 45.06 is entirely new, underlining is omitted as unnecessary]

Rule 45.06 Interstate Depositions and Discovery

(a) Definitions. In Rule 45.06:

(1) "Foreign jurisdiction" means a state other than this state.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) attend and give testimony at a deposition;

(B) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(C) permit inspection of premises under the control of the person.

(b) Issuance of Subpoena.

(1) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to the district court administrator of the court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this act does not constitute an appearance in a proceeding pursuant to Rule 5.01 of these rules, but does subject the filer to the jurisdiction of the court and to Minnesota law and rules, including the Minnesota Rules of Professional Conduct.

(2) A district court administrator in this state, upon submission of a foreign subpoena, shall, in accordance with that court's procedure, promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3) A subpoena under subsection (2) must:

(A) incorporate the terms used in the foreign subpoena; and

(B) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(c) Service of Subpoena. A subpoena issued by a district court administrator under Section (b) must be served in compliance with Rule 45.02 of these rules.

(d) Deposition, Production, and Inspection. All Minnesota rules and statutes applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under Paragraph (b).

(e) Application To Court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a district court administrator under Paragraph (b) must comply with the rules and statutes of this state and be submitted to the district court in the county in which discovery is to be conducted.

Advisory Committee Comments—2015 Amendments

Rule 45.06 is a new rule, recommended to adopt the Uniform Interstate Deposition and Discovery Act, promulgated by the National Conference of Commissioners on Uniform State Laws in 2007.

This rule allows issuance of a subpoena in Minnesota based upon the proper issuance and service of a subpoena under the authority of another state. If a Minnesota subpoena is issued, the procedures of Rule 45 apply to the service and enforcement of that subpoena and other procedures relating to it. Notice must be provided to all other parties to the action, and the form of subpoena must conform to Minnesota law. Minnesota citizens and residents are entitled to the full protection of Minnesota's rules even where the subpoena is initiated for use in foreign proceedings.

Although adopted as a rule, rather than a statute, recognizing the Minnesota Supreme Court's inherent and exclusive authority over matters of court procedure, the rule retains the operative provisions of the Uniform Act. Like uniform laws, this rule should be interpreted to accomplish uniformity among the states and should be construed to promote that purpose. See Minn. Stat. § 645.22. Construction of the uniform law by other states may accordingly be relevant to its interpretation in Minnesota. See generally Layne-Minn. Co. v. Regents of the Univ. of Minn., 266 Minn. 284, 123 N.W.2d 371 (1963).

Rule 53. Masters

* * *

53.02 Order Appointing Master

(a) Notice. The court must give the parties notice and an opportunity to be heard before appointing a master. A party may suggest candidates for appointment.

(b) Contents. The order appointing a master must direct the master to proceed with all reasonable diligence and must state:

(1) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53.03;

(2) the circumstances—if any—in which the master may communicate ex parte with the court or a party;

(3) the nature of the materials to be preserved and filed as the record of the master's activities;

(4) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; ~~and~~

(5) the basis, terms, and procedure for fixing the master's compensation under Rule 53.08; and

(6) the extent to which, if at all, the parties and the master must use the court's E-Filing System in the proceedings before the master.

(c) Entry of Order. The court may enter the order appointing a master only after the master has filed an affidavit disclosing whether there is any ground for disqualification and, if a ground for disqualification is disclosed, after the parties have consented with the court's approval to waive the disqualification.

(d) Amendment. The order appointing a master may be amended at any time after notice to the parties and an opportunity to be heard.

Advisory Committee Comments—2015 Amendments

Rule 53.02(b) is amended to add a new subdivision (6) that expressly requires the court's appointment order to address the extent to which the parties and an appointed master must use the court's E-Filing System. This provision recognizes that a particular master may not otherwise be a registered user of the court's E-Filing System, and it may be appropriate either to direct that the parties and the master use the system for all service and filing or in the rare case, to excuse the master and parties from doing so.

Rule 54. Judgments; Costs

* * *

54.04 Costs

* * *

(b) Application for costs and disbursements. A party seeking to recover costs and disbursements must serve and file a detailed ~~sworn~~ application for taxation of costs and disbursements with the court administrator, substantially in the form as published by the ~~S~~state ~~C~~court ~~A~~administrator. The application must be signed under oath or penalty of perjury pursuant to Minn. Stat. § 358.116, and must be served and filed not later than 45 days after entry of a final judgment as to the party seeking costs and disbursements. A party may, but is not required to, serve and file a memorandum of law with an application for taxation of costs and disbursements.

(c) Objections. Not later than 7 days after service of the application by any party, any other party may file a separate ~~sworn~~ application as in section (b), above, or may file written objections to the award of any costs or disbursements sought by any other party, specifying the grounds for each objection.

Advisory Committee Comments—2015 Amendments

Rule 54.04 is amended to implement a new statute directing the courts to consider accepting documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minn. Stat. § 358.116 (2014) (codifying 2014 Minn. Laws ch. 204, § 3). The statute allows the courts to require specifically by rule that notarization is necessary, but the difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization. Accordingly, cost applications may be signed by the party under penalty of perjury, so long as the appropriate language is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits."

Rule 56. Summary Judgment

* * *

56.05 Form of Affidavits; Further Testimony; Defense Required

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all documents~~papers~~ or parts thereof referred to in an affidavit shall be attached thereto or served therewith. A "sworn copy" includes documents that are authenticated by a signature under penalty of perjury, pursuant to Minn. Stat. § 358.116. The court may permit affidavits to be supplemented or opposed by depositions or by further affidavits. When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleading but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Advisory Committee Comments—2015 Amendments

Rule 56.05 is amended in two ways. The first is not substantive in nature or intended effect. The replacement of "papers" with "documents" is made throughout these rules, and simply advances precision in choice of language. Most documents will not be filed as "paper" documents, so paper is retired as a descriptor of them.

The second change is substantive in nature, and expressly implements a new statute directing the courts to consider accepting documents without notarization if they are signed under the following language: "I declare under penalty of perjury that everything I have stated in this document is true and correct." Minn. Stat. § 358.116 (2014) (codifying 2014 Minn. Laws ch. 204, § 3). The statute allows the courts to require specifically by rule that notarization is necessary, but the difficulty in accomplishing and documenting notarization for documents that are e-filed and e-served militates against requiring formal notarization. Accordingly, summary judgment affidavits may be signed by the party under penalty of perjury, so long as the appropriate language is included above the party's signature. The rule also requires inclusion of the date of signing and the county and state where signed to provide information necessary to establish the fact and venue of possible perjury; this information is otherwise provided by notarization. Rule 15 of the Minnesota General Rules of Practice provides that documents signed in accordance with its terms constitute "affidavits."

Rule 65. Injunctions

* * *

65.03 Security

(a) No temporary restraining order or temporary injunction shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(b) Whenever security is given in the form of a bond or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the court administrator as the surety's agent upon whom any documents~~papers~~ affecting liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the court administrator, who shall forthwith transmit~~mail~~ copies to the sureties if their addresses are known.

Advisory Committee Comments—2015 Amendments

The amendments to Rule 65.03 are not substantive in nature or intended effect. The replacement of "papers" with "documents" is made throughout these rules, and simply advances precision in choice of language. Most documents will not be filed as "paper" documents, so paper is retired as a descriptor of them. The word "transmit" is used in preference to "mail," recognizing that many documents will be delivered by electronic or means other than the United States mail.

Rule 77. District Courts and Court Administrators

77.01 District Courts Always Open

The district courts shall be deemed always open for the purpose of filing any pleading or other proper documents~~paper~~, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

Appendix of Forms

(See Rule 84)

Introductory Statement

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms.

2. Except where otherwise indicated, each pleading, motion, ~~and~~or other ~~paper~~document should have a caption similar to that in the summons, with the designation of the particular ~~paper~~document substituted for the word "SUMMONS." In the caption of the summons and in the caption of the complaint, all parties must be named, but in other pleadings and ~~papers~~documents it is sufficient to state the name of the first party on either side, with an appropriate indication of other parties. See Rules 4.01, 7.02(2), 10.01.

3. Each pleading, motion, and other ~~paper~~document is to be signed in his or her individual name by at least one attorney of record. (Rule 11.) The attorney's name is to be followed by his or her address as indicated in Form 2. In forms following Form 2 the signature and address are not indicated.

4. If a party is ~~not~~ self-represented ~~by an attorney~~, the signature and address of the party are required in place of those of the attorney.